

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK A. SULLIVAN,

Plaintiff,

-against-

DONALD TRUMP, PRESIDENT
(IMPEACHED IN H.R.); (THE CURRENT
TRUMP ADMINISTRATION I ALSO
FAULT); (REP. OF THE SENATE HAVE
SECLUDED THE CONGRESS IN D.C.),

Defendants.

19-CV-11824 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff Mark A. Sullivan, appearing *pro se*, brings this action alleging that Defendants violated his rights. By order dated January 2, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in

original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff’s complaint is not the model of clarity, but it appears that he blames Defendants for things that have happened in his life.

After checking the box on the form to invoke the Court’s federal question jurisdiction, he lists the following (in the section in which he is asked to state which of his federal constitutional or federal statutory rights have been violated): “obstruction of justice on my worklife, temp claim, and inheritance [sic]. My life[;] obstruction [sic] of justice on crucial evidence incrimnt’g [sic] all Americans since found vs. kept away till Jan 11, 2017 incriminating only himself, Don J. Trump[;] obstruction of justice in limiting me to this federal question criminal complaint when I

found this he murdered the true father of (M.S.) Criskyle not intimidating me[,] he burried [sic] this – I have to decide/to end this.” (ECF No. 2 at 2.)¹

Where asked to list the place(s) of occurrence, Plaintiff writes “Periman TX/Rosswell N.M. area “Wieldland Form B-19 contract (1st Degree Murder)” and where asked to state the date of occurrence, he writes “As this truth, I revealed to US he threatened the life of co-worker (why do I have to say that obstruction of justice on whole life).” (*Id.* at 5.)

DISCUSSION

A. Presidential Immunity

Plaintiff’s claims against Donald J. Trump for acts performed in his official capacity as President of the United States must be dismissed because the President is absolutely immune from suit for damages “predicated on his official acts.” *Nixon v. Fitzgerald*, 457 U.S., 749 (1982); *Int’l Siva Consciousness, et al. v. United States, et al.*, ECF 1:92 Civ. 8188, 32, 1993 WL 322862, at *1 (S.D.N.Y. Aug. 18, 1993). Plaintiff’s claims against Donald J. Trump arise out of acts performed in his official capacity as President of the United States. The Court therefore dismisses Plaintiff’s claims as foreclosed by absolute immunity and as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i), (iii); *Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) (“A complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989))).

B. Sovereign Immunity

Plaintiff’s claims against the remaining Defendants must also be dismissed. The doctrine of sovereign immunity bars federal courts from hearing all suits against the federal government, including suits against its agencies, except where sovereign immunity has been waived. *United*

¹ Page numbers refer to those generated by the Court’s electronic case filing system.

States v. Mitchell, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 (“FTCA”), provides for a waiver of sovereign immunity for injuries arising from the tortious conduct of federal officers or agents acting within the scope of their office or employment. 28 U.S.C. § 1346(b)(1). But before bringing a claim in a federal district court under the FTCA, a claimant must first exhaust his administrative remedies by filing a claim for monetary damages with the appropriate federal government entity and must receive a final written determination. *See* 28 U.S.C. § 2675(a); *Phillips v. Generations Family Health Ctr.*, 723 F.3d 144, 147 (2d Cir. 2013).

Pursuant to the FTCA, tort claims against the United States must be “presented in writing to the appropriate Federal agency within two years after such claim accrues” or an action must be commenced within six months of when the agency issued its final denial of administrative remedy. *Roberson v. Greater Hudson Valley Family Health Ctr., Inc.*, ECF 1:17-CV-7325, 17, 2018 WL 2976024, at *2 (S.D.N.Y. June 12, 2018); *see also* 28 U.S.C. § 2401(b). “Failure to exhaust the agency’s administrative remedies within the statute of limitations will render the claim ‘forever barred.’” *See id.* (citing *Castellanos v. Elrac Inc.*, No. 07-CV-2191 (DLE) (KAM), 2008 WL 919641, at *2 (E.D.N.Y. Apr. 3, 2008)). The exhaustion requirement is jurisdictional and cannot be waived. *Celestine v. Mount Vernon Neighborhood Health Ctr.*, 403 F.3d 76, 82 (2d Cir. 2005).

Here, there is no indication that Plaintiff has exhausted his administrative remedies under the FTCA. Therefore, to the extent that Plaintiff seeks to assert claims against these additional federal Defendants, the Court must dismiss Plaintiff’s claims as barred by the doctrine of sovereign immunity. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket. Plaintiff's complaint, filed IFP under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), (iii).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: January 17, 2020
New York, New York



COLLEEN McMAHON
Chief United States District Judge